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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 ANTHONY OLIVER,

10 Petitioner,

11 vs.

12 HOWARD SKOLNIK, et al.,

13 Respondents.

Case No. 2:08-CV-01391-RLH-(PAL)

**ORDER**

14  
15 Petitioner has submitted an Application to Proceed in Forma Pauperis (#1) and a  
16 Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The Court finds that Petitioner  
17 is unable to pay the filing fee. The Court has reviewed the Petition pursuant to Rule 4 of the Rules  
18 Governing Section 2254 Cases in the United States District Courts. Petitioner must show cause  
19 why the Court should not dismiss this action for failure to exhaust available state-court remedies.

20 Petitioner was convicted of attempted murder and six counts of domestic violence  
21 battery with bodily harm. The state court adjudicated Petitioner as a habitual criminal and  
22 sentenced him to two concurrent terms of life imprisonment with the possibility of parole. Petition,  
23 p. 2. The state court entered its judgment of conviction on June 5, 2008. Id., p. 1. Petitioner  
24 appealed, and the appeal is currently pending in the Nevada Supreme Court. Id., p. 3.

25 Before a federal court may consider a petition for a writ of habeas corpus, the  
26 petitioner must exhaust the remedies available in state court. 28 U.S.C. § 2254(b). To exhaust a  
27 ground for relief, a petitioner must fairly present that ground to the state's highest court, describing  
28 the operative facts and legal theory, and give that court the opportunity to address and resolve the

1 ground. See Duncan v. Henry, 513 U.S. 364, 365 (1995) (per curiam); Anderson v. Harless, 459  
2 U.S. 4, 6 (1982).

3 Petitioner raises one ground for relief. He claims that his sentence as a habitual  
4 criminal violates the Fourteenth Amendment because the sentence exceeds the limits in the habitual  
5 criminal statute, Nev. Rev. Stat. § 207.010. Petitioner's first opportunity to raise this claim with the  
6 Nevada Supreme Court is his appeal from his judgment of conviction. That appeal is still pending,  
7 and the ground for relief appears to be unexhausted. See Sherwood v. Tomkins, 716 F.2d 632, 634  
8 (9th Cir. 1983).

9 IT IS THEREFORE ORDERED that the Application to Proceed in Forma Pauperis  
10 (#1) is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

11 IT IS FURTHER ORDERED that the Clerk of the Court shall file the Petition for a  
12 Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254.

13 IT IS FURTHER ORDERED that, within thirty (30) days from the date on which this  
14 Order is entered, Petitioner shall show cause why the Court should not dismiss this action for the  
15 failure to exhaust available remedies in state court.

16 DATED: October 16, 2008.

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18 ROGER L. HUNT  
19 Chief United States District Judge  
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